

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

IMMERSION CORPORATION,

Plaintiff,

v.

SAMSUNG ELECTRONICS AMERICA, INC.;
SAMSUNG ELECTRONICS CO., LTD.

Defendants.

Case No. 2:17-CV-00572-JRG
LEAD CASE

Case No. 2:18-cv-00055-JRG

JURY TRIAL DEMANDED

IMMERSION CORPORATION'S MOTIONS IN LIMINE NOS. 1 THROUGH 9

TABLE OF CONTENTS

	Page
I. MOTION IN LIMINE NO. 1 TO EXCLUDE ANY EVIDENCE OF OR ARGUMENT ABOUT IPR PROCEEDINGS	1
II. MOTION IN LIMINE NO. 2 TO EXCLUDE INTRODUCTION INTO EVIDENCE OR PUBLICATION TO THE JURY OF ANY OF SAMSUNG'S PATENTS.....	2
III. MOTION IN LIMINE NO. 3 TO EXCLUDE ARGUMENT AND EVIDENCE ABOUT [REDACTED]	4
IV. MOTION IN LIMINE NO. 4 TO EXCLUDE ARGUMENT AND EVIDENCE ABOUT [REDACTED]	6
V. MOTION IN LIMINE NO. 5 TO EXCLUDE COMPARISONS BY SAMSUNG OF THE ACCUSED PRODUCTS TO ANY PREFERRED EMBODIMENT (AS OPPOSED TO THE ASSERTED CLAIMS).....	9
VI. MOTION IN LIMINE NO. 6 TO EXCLUDE ANY ARGUMENT OR EVIDENCE REGARDING COMPARISON OF THE ACCUSED PRODUCTS TO THE PRIOR ART.....	10
VII. MOTION IN LIMINE NO. 7 TO PROHIBIT INTRODUCTION INTO EVIDENCE OR PUBLICATION OF NON-CHARTED PRIOR ART.....	10
VIII. MOTION IN LIMINE NO. 8 TO EXCLUDE NON-INFRINGEMENT EVIDENCE AND ARGUMENT BASED ON FACTS NOT INCLUDED IN SAMSUNG'S RESPONSE TO NON-INFRINGEMENT CONTENTION INTERROGATORY.....	11
IX. MOTION IN LIMINE NO. 9 TO EXCLUDE EVIDENCE OR TESTIMONY SUGGESTING THAT AN AWARD OF DAMAGES IN THE CASE MIGHT DRIVE UP THE PRICE OF PRODUCTS TO END CUSTOMERS, CAUSE PEOPLE TO LOSE JOBS, OR HAVE OTHER SIMILAR ECONOMIC CONSEQUENCES	13

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Aylus Networks, Inc. v. Apple Inc.</i> , 856 F.3d 1353 (Fed. Cir. 2017).....	2
<i>Bio-Tech. Gen. Corp. v. Genentech, Inc.</i> , 80 F.3d 1553 (Fed. Cir. 1996).....	3
<i>Bruce v. Ancra Int'l, LLC</i> , 2018 U.S. Dist. LEXIS 62115 (E.D. Louisiana, April 12, 2018)	13
<i>Carnegie Mellon Univ. v. Marvell Tech. Grp., Ltd.</i> , 807 F.3d 1283 (Fed. Cir. 2015).....	3
<i>Commonwealth Sci. & Indus. Research Org. v. Cisco Sys. Inc.</i> , 809 F.3d 1295 (Fed. Cir. 2015).....	15
<i>ContentGuard Holdings, Inc. v. Amazon.com, Inc.</i> , No. 2:13-CV-01112-JRG, 2015 WL 11089489 (E.D. Tex. Aug. 24, 2015).....	13
<i>ContentGuard Holdings, Inc. v. Amazon.com, Inc.</i> , No. 2:13-cv-01112-JRG, ECF No. 897, slip op. (E.D. Tex. Sep. 3, 2015)	1
<i>Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.</i> , No. 2:14-CV-00912-JRG, ECF No. 108, slip op. (E.D. Tex. Feb. 21, 2019).....	5, 7
<i>Core Wireless Licensing S.A.R.L. v. LG Elecs. Inc.</i> , No. 2:14-cv-911-JRG-RSP, ECF No. 519, slip op. (E.D. Tex. July 12, 2016)	1
<i>Core Wireless Licensing S.A.R.L. v. LG Elecs. Inc.</i> , No. 2:14-cv-911-JRG-RSP, ECF No. 563, slip op. (E.D. Tex. Sept. 8, 2016).....	1
<i>CoreLogic Info. Sols., Inc. v. Fiserv, Inc.</i> , No. 2:10-CV-132-RSP, 2012 WL 4761739 (E.D. Tex. Sept. 20, 2012)	8
<i>Costa v. Desert Palace, Inc.</i> , 299 F.3d 838 (9th Cir. 2002)	5
<i>EEOC v. Serv. Temps</i> , 2010 U.S. Dist. LEXIS 40063 (N.D. Tex., April 22, 2010)	12

TABLE OF AUTHORITIES
(continued)

	Page(s)
<i>Elbit Sys. Land & C4I Ltd. v. Hughes Network Sys., LLC,</i> No. 2:15-CV-00037-RWS-RSP, ECF No. 450, slip op. (E.D. Tex. July 25, 2017)	11
<i>Ericsson, Inc. v. D-Link Sys., Inc.,</i> 773 F.3d 1201 (Fed. Cir. 2014).....	14
<i>Flexuspine, Inc. v. Globus Medical, Inc.,</i> Case No. 6:15-cv-201, ECF No. 145 (E.D. Tex. July 6, 2016)	8
<i>Genband US LLC v. Metaswitch Networks Corp.,</i> No. 2:14-cv-33-JRG-RSP, ECF No. 370, slip op. (E.D. Tex. Sept. 30, 2015).....	3
<i>HTC Corp. v. Telefonaktiebolaget LM Ericsson,</i> No. 6:18-CV-00243-JRG, ECF No. 447, slip op. (E.D. Tex. Feb. 8, 2019).....	6
<i>Implicit, LLC v. Trend Micro, Inc.,</i> No. 6:16-CV-00080-JRG, ECF No. 253, slip op. (E.D. Tex. Oct. 3, 2017).....	5, 7
<i>Intellectual Ventures I LLC v. T Mobile USA, Inc.,</i> No. 2:17-CV-577-JRG, ECF No. 297 (E.D. Tex. Jan. 3, 2019)	5, 7
<i>Intellectual Ventures I LLC v. T Mobile USA,</i> No. 2:17-CV-00577-JRG, ECF No. 294, slip op. (E.D. Tex. Jan. 8, 2019)	1, 5, 9, 10
<i>Johnson & Johnston Associates Inc. v. R.E. Service Co.,</i> 285 F.3d 1046 (Fed. Cir. 2002).....	9
<i>KAIST IP US LLC v. Samsung Elecs. Co.,</i> No. 2:16-cv-01314-JRG-RSP, ECF No. 416, slip op. (E.D. Tex. May 2, 2018).....	2, 3, 9
<i>Kolcraft Enterprises, Inc. v. Chicco USA, Inc.,</i> No. 01:09-cv-03339, ECF No. 343, slip op. (N.D. Ill. July 16, 2018)	2
<i>McGautha v. Jackson County, Mo., Collections Dept.,</i> 36 F.3d 53 (8th Cir. 1994)	5
<i>Network-1 Techs., Inc. v. Alcatel-Lucent USA, Inc.,</i> No. 6:11-cv-492-RWS-KNM, 2017 U.S. Dist. LEXIS 154435 (E.D. Tex. Sept. 21, 2017)	14, 15

TABLE OF AUTHORITIES
(continued)

	Page(s)
<i>Packet Intelligence LLC v. Netscout Sys., Inc.</i> , No. 2:16-cv-230-JRG, ECF No. 228, slip op. (E.D. Tex. Sep. 29, 2017)	5, 6, 9
<i>Parthenon Unified Memory Architecture LLC v. Apple, Inc.</i> , No. 2:15-cv-621-JRG-RSP, ECF No. 246, slip op. (E.D. Tex. Sept. 21, 2016).....	10
<i>Perdiemco, LLC v. Industrack LLC</i> , No. 2:15-CV-00727-JRG-RSP, ECF No. 250, slip op. (E.D. Tex. Oct. 13, 2016)	11
<i>Pers. Audio, LLC v. Apple, Inc.</i> , No. 9:09CV111, 2011 WL 6148587 (E.D. Tex. June 16, 2011)	12
<i>Red Rock Analytics, LLC v. Samsung Elecs. Co., Ltd.</i> , No. 2:17-cv-101-RWS-RSP, ECF No. 243, slip op. (E.D. Tex. Mar. 13, 2019).....	14
<i>Red Rock Analytics, LLC v. Samsung Electronics Co., Ltd., et al.</i> , Case No. 2:17-cv-101 (E.D. Tex., March 14, 2019).....	10
<i>Rembrandt Wireless Techs., LP v. Samsung Elecs. Co., Ltd.</i> , No. 2:13-cv-213-JRG-RSP, ECF No. 225, at 83:2-21 (E.D. Tex. Jan. 22, 2015)	13
<i>Rembrandt Wireless Techs., LP v. Samsung Electronics Co.</i> , No. 2:13-CV-213-JRG-RSP, ECF No. 248, slip op. (E.D. Tex. Jan. 30. 2015).....	10, 13
<i>ResQNet.com, Inc. v. Lansa, Inc.</i> , 594 F.3d 860 (Fed. Cir. 2010).....	8
<i>Saint Lawrence Communications LLC v. Motorola Mobility LLC</i> , Case No. 2:15-cv-00349-JRG, ECF No. 442, slip op. (E.D. Tex., Feb. 21, 2017)	12
<i>Semcon IP Inc. v. Huawei Device USA Inc.</i> , No. 2:16-cv-00437-JRG-RSP, ECF No. 290, slip op. (E.D. Tex. Dec. 15, 2017)	10
<i>Smartflash LLC v. Apple Inc.</i> , No. 6:13-cv-447-JRG-KNM, 2015 U.S. Dist. LEXIS 179336 (E.D. Tex. Jan. 29, 2015)	14

TABLE OF AUTHORITIES
(continued)

	Page(s)
<i>St. Lawrence Commc'ns LLC v. ZTE Corp.</i> , No. 2:15-cv-349, ECF No. 458 (E.D. Tex. Mar. 2, 2017)	14

<i>Texas Pig Stands, Inc. v. Hard Rock Cafe Int'l, Inc.</i> , 951 F.2d 684 (5th Cir. 1992)	5
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<i>Zenith Elecs. Corp. v. PDI Comm. Sys. Inc.</i> , 522 F.3d 1348 (Fed. Cir. 2008).....	9, 10
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<i>ZiiLabs, Inc. v. Samsung Elecs. Co.</i> , No. 2:14-cv-203-JRG-RSP, ECF No. 455, slip op. (E.D. Tex. Oct. 28, 2015)	2
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Other Authorities

Fed. R. Civ. P. 26.....	12
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Fed. R. Civ. P. 37(c)	12
-----------------------------	----

Fed. R. Evid. 401	13
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Fed. R. Evid. 402	3, 5, 6, 7, 13
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Fed. R. Evid. 403	3, 5, 6, 7, 13
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Plaintiff Immersion Corporation moves *in limine* to exclude argument, testimony, and evidence relating to the following nine topics.

I. MOTION IN LIMINE NO. 1 TO EXCLUDE ANY EVIDENCE OF OR ARGUMENT ABOUT IPR PROCEEDINGS

Immersion seeks the standard *limine* this Court issues—and that many parties agree to—to exclude argument and evidence regarding ongoing *Inter Partes* Review proceedings.

Specifically, during the pendency of this action, Samsung has filed numerous petitions for IPR, some of which to date are not instituted and none of which have reached final decision.

(IPR2018-01467, IPR2018-01468, IPR2018-01469, IPR2018-01470, IPR2018-01499, IPR2018-01500, IPR2018-01501, and IPR2018-01502.) These proceedings are not relevant to the issues to be decided by the jury, and any limited probative value would be substantially outweighed by the danger of jury confusion and unfair prejudice to Immersion—a danger specifically avoided by many past decisions of this Court on this very issue. *See, e.g., Core Wireless Licensing S.A.R.L. v. LG Elecs. Inc.*, No. 2:14-cv-911-JRG-RSP, ECF No. 519, slip op. at 4 (E.D. Tex. July 12, 2016) (“The parties may not refer to the existence, pendency, or outcome of post-grant proceedings at the USPTO”), report and recommendation adopted, ECF No. 563, slip op. at 1 (E.D. Tex. Sept. 8, 2016); *ContentGuard Holdings, Inc. v. Amazon.com, Inc.*, No. 2:13-cv-01112-JRG, ECF No. 897, slip op. at 2 (E.D. Tex. Sep. 3, 2015) (precluding the parties from “any argument, evidence, testimony, insinuation, reference, or assertion to post-issuance PTO proceedings of [patentee’s] patents”); *cf. Intellectual Ventures LLC v. T Mobile USA, Inc.*, No. 2:17-CV-00577-JRG, ECF No. 294 slip op. at 2 (E.D. Tex. Jan. 8, 2019) (“Any Party that wishes to talk about the PTAB or IPR proceedings in any way must first approach the bench”).

During meet and confer, the only purported relevance identified by Samsung was to claim interpretation. However, this is manifestly not an issue for the jury. While “statements

made by a patent owner during an IPR proceeding can be relied on to support a finding of prosecution disclaimer during claim construction,” *Aylus Networks, Inc. v. Apple Inc.*, 856 F.3d 1353, 1359 (Fed. Cir. 2017), claim construction is not an issue for the jury, and the Court has already issued a claim construction order. Courts in this district have rejected similar arguments from Samsung in other cases for this reason. *See, e.g., KAIST IP US LLC v. Samsung Elecs. Co.*, No. 2:16-cv-01314-JRG-RSP, ECF No. 416, slip op. at 3-4 (E.D. Tex. May 2, 2018) (rejecting arguments made in Samsung’s bench memorandum on “prosecution history estoppel” because “proving infringement” and “proving invalidity” are “not . . . decision[s] on whether Defendants’ prosecution history arguments or evidence may be presented to the jury”); *see also ZiiLabs, Inc. v. Samsung Elecs. Co.*, No. 2:14-cv-203-JRG-RSP, ECF No. 455, slip op. at 1 (E.D. Tex. Oct. 28, 2015) (granting motion *in limine*, as the use of the prosecution history to argue the meaning of claim language in front of the jury “carries the risk that the jury will give it undue weight because it is part of the intrinsic record”). Other district courts are in accord. *See, e.g., Kolcraft Enterprises, Inc. v. Chicco USA, Inc.*, No. 01:09-cv-03339, ECF No. 343, slip op. at 3 (N.D. Ill. July 16, 2018) (precluding argument relating to prosecution histories “because the Court has decided the claim constructions, so the jury is not going to re-do those”).

The Court therefore should exclude all evidence or argument relating to the ongoing IPR proceedings.

II. MOTION IN LIMINE NO. 2 TO EXCLUDE INTRODUCTION INTO EVIDENCE OR PUBLICATION TO THE JURY OF ANY OF SAMSUNG’S PATENTS

The Court should preclude argument or evidence relating to Samsung’s patents, particularly those having to do with haptic feedback. Samsung is not relying on any of its own patents as prior art. Yet Samsung indicated during meet and confer that it may present testimony or other evidence at trial regarding its own patents, and specifically, that it has patents allegedly

within the same technological space as Immersion's asserted patents. Such argument and evidence has very minimal, if any, relevance, and has a very high risk of confusing the jury, for example, by inviting the improper inference that just because Samsung has patents it somehow cannot or should not be liable for patent infringement. *See Fed. R. Evid. 402 & 403.*

Obtaining patents of one's own is not a defense to patent infringement. *See, e.g., Bio-Tech. Gen. Corp. v. Genentech, Inc.*, 80 F.3d 1553, 1559 (Fed. Cir. 1996). Nor is it a good-faith basis for a belief that one does not infringe. *See, e.g., Carnegie Mellon Univ. v. Marvell Tech. Grp., Ltd.*, 807 F.3d 1283, 1301 (Fed. Cir. 2015). Even if Samsung does not overtly draw this link, there can be no reason for Samsung to be telling the jury it has patents in the same space, except on the hope that it will cause this very conclusion in the jury's mind. For these reasons, courts in the Eastern District of Texas frequently preclude references to a defendant's patents. *See, e.g., KAIST IP US*, ECF No. 416, slip op. at 1-2 (precluding argument “[t]hat Defendants cannot infringe because they have their own patents” or that “the Accused Instrumentalities practice other patents”); *Genband US LLC v. Metaswitch Networks Corp.*, No. 2:14-cv-33-JRG-RSP, ECF No. 370, slip op. at 8 (E.D. Tex. Sept. 30, 2015) (precluding “evidence or argument related to any . . . patent or patent application” owned by the defendant).

Nor is there any argument that Samsung's patents are relevant to damages or any other issue in this case. Samsung's technical expert Dr. Wolfe lists a handful of Samsung patents related to haptic technology in his non-infringement report. (*See Ex. 1 at ¶¶ 58-61.*) Dr. Wolfe provides no analysis comparing any claim of any of these patents to the accused devices, nor does he rely on any as a prior art reference. (*Id.*) He briefly notes these patents only to support the proposition that “Samsung has made its own significant contributions to the haptics technology space over the years.” (*See id.*) But, of course, this is not a fact relevant to any

party's claim or defense in this action. Its only purpose can be to hope the jury improperly infers something about noninfringement or invalidity based on Samsung's claim it has patents in the same space as those being asserted against it.

Samsung's damages expert, Mr. Bakewell, cites five Samsung patents in one paragraph of his expert report, simply for the proposition that "Immersion's portfolio does not cover all aspects of haptics in mobile phones." (Ex. 2 at ¶347.) He does not analyze the patents or tie them to his damages opinions in any way. Mr. Bakewell performs no analysis of the value of these patents, no analysis of whether the accused products practice these patents, and does not in any other way factor these patents into his damages calculations. (*See id.*)

Allowing Samsung to tell the jury it has patents in the haptic space, or worse, to introduce these patents into evidence or to publish them to the jury, risks all the harms noted above, and would not tend to make any fact of consequence in this action more or less likely. The court should exclude this irrelevant and prejudicial material from trial, including at least DTX-451 (U.S. Patent No. 8,040,224), DTX-452 (U.S. Patent No. 8,412,282), DTX-453 (U.S. Patent No. 8,494,497), DTX-726 (U.S. Patent No. 7,978,180), DTX-727 (U.S. Patent No. 8,410,917), DTX-728 (U.S. Patent No. 8,659,536), DTX-729 (U.S. Patent No. 8,928,204), DTX-730 (U.S. Patent No. 9,118,299), DTX-731 (U.S. Patent No. 9,600,984), DTX-732 (U.S. Patent No. 9,743,883), DTX-733 (U.S. Patent No. 9,880,570), DTX-734 (U.S. Patent No. 9,911,291) and any other Samsung patents.

III. MOTION IN LIMINE NO. 3 TO EXCLUDE ARGUMENT AND EVIDENCE ABOUT [REDACTED]

Immersion moves for an *in limine* order precluding Samsung from presenting evidence or argument relating to a [REDACTED]

[REDACTED] These arbitration proceedings both

[REDACTED]. Immersion [REDACTED]

[REDACTED]. During meet

and confer, Samsung could identify no purported relevance of these proceedings to the facts to be decided by the jury. Instead, Samsung took the position that all “background” of the parties is properly before the jury.

Samsung’s position is contrary to the Federal Rules and the law of this district. Evidence and argument relating to prior disputes is frequently excluded under Rules 402 and 403 because of its ability to confuse the issues and mislead the jury. *See, e.g., Texas Pig Stands, Inc. v. Hard Rock Cafe Int’l, Inc.*, 951 F.2d 684, 690 n.7 (5th Cir. 1992) (affirming exclusion of evidence and testimony relating to prior litigation); *McGautha v. Jackson County, Mo., Collections Dept.*, 36 F.3d 53, 57 (8th Cir. 1994) (affirming exclusion of evidence relating to earlier arbitration between the parties); *Costa v. Desert Palace, Inc.*, 299 F.3d 838, 863 (9th Cir. 2002) (same). For this reason, this Court routinely grants motions *in limine* precluding reference to prior proceedings or different litigation between the parties. *See, e.g., Intellectual Ventures, No. 2:17-CV-577-JRG*, ECF No. 297 at 175:6-22 (E.D Tex. Oct. 3, 2017) (granting motion *in limine* to exclude evidence of prior litigation between parties); *Core Wireless*, No. 2:14-CV-00912-JRG, ECF No. 108, slip op. at 3 (precluding references to foreign litigation between the parties); *Implicit, LLC v. Trend Micro, Inc.*, No. 6:16-CV-00080-JRG, ECF No. 253, slip op. at 5 (precluding reference to “prior orders of other tribunals”); *Packet Intelligence LLC v. Netscout*

Sys., Inc., No. 2:16-cv-230-JRG, ECF No. 228, slip op. at 9 (E.D. Tex. Sep. 29, 2017) (precluding “[a]rguments, [o]pinions, and [t]estimony” regarding foreign proceedings).

[REDACTED] will be a confusing, unnecessary, and irrelevant distraction.

As in other cases where courts have excluded such material, Samsung should be precluded from presenting evidence relating [REDACTED]. *See, e.g., HTC Corp. v. Telefonaktiebolaget LM Ericsson*, No. 6:18-CV-00243-JRG, ECF No. 447, slip op. at 7 (E.D. Tex. Feb. 8, 2019) (finding it “improper and impermissible” for parties to represent facts “as having come from an arbitration proceeding or bench trial”). The Court should exclude at least DTX-089 [REDACTED]
[REDACTED], DTX-195 ([REDACTED]), DTX-777 through DTX-780
(correspondence between parties [REDACTED]), and any other material or testimony relating to [REDACTED].

IV. MOTION IN LIMINE NO. 4 TO EXCLUDE ARGUMENT AND EVIDENCE ABOUT [REDACTED]

The Court should exclude evidence and argument regarding a prior, unrelated lawsuit between Samsung and Tactile Feedback Technology, LLC (“TFT”) and [REDACTED]
[REDACTED] pursuant to Rules 402, 403 and applicable case law. The facts regarding the TFT lawsuit are a sideshow and as demonstrated in Immersion’s pending *Daubert* motion, Samsung fails to establish that [REDACTED] is a comparable license.

In October 2014, TFT sued Samsung for infringing four U.S. patents. Samsung

[REDACTED]. Immersion
[REDACTED]
[REDACTED]. Immersion nevertheless
[REDACTED]
[REDACTED]. [REDACTED]

[REDACTED]. The TFT lawsuit against Samsung proceeded until Samsung and TFT [REDACTED].

Immersion had no involvement [REDACTED]. In July 2016, [REDACTED]

[REDACTED]
[REDACTED]

Re-hashing the ins and outs of this now-settled legal dispute between Samsung and a third party sheds no light on whether any fact of consequence in this action is more or less likely. It only risks confusing the jury as to the issues in the present case, and would unduly complicate and lengthen these proceedings. As discussed in MIL No. 3, this Court often excludes evidence and testimony about prior litigation between parties as irrelevant and prejudicial under Fed. Rules of Evid. 402 and 403. *See, e.g., Intellectual Ventures*, ECF No. 297 at 175:6-22 (E.D. Tex. Jan. 3, 2019) (granting motion *in limine* to exclude evidence of prior litigation between parties); *Core Wireless*, ECF No. 108, slip op. at 3 (precluding references to foreign litigation between the parties); *Implicit*, ECF No. 253, slip op. at 5 (precluding reference to “prior orders of other tribunals”). Here, this principle applies with greater force as the TFT case was not even litigation between the parties but rather between Samsung and a third party.

Samsung apparently intends to argue and offer expert testimony from its damages expert Christopher Bakewell that this previous, unrelated patent suit between Samsung and TFT is somehow relevant to the hypothetical negotiation. This contention is not well taken. As to the [REDACTED], Mr. Bakewell does not take into account in any way how [REDACTED] would or could have impacted the bargaining dynamics between the parties. (*See* Ex. 2 at ¶ 279 (sole mention in

report of [REDACTED], with no additional analysis.)

As to the [REDACTED] TFT and Samsung, it is not relevant and admissible for proving a reasonable royalty. The opinions of Samsung's damages expert regarding the [REDACTED] are subject to a pending *Daubert* motion. (ECF Nos. 112, 131.) As explained in that motion, Mr. Bakewell's analysis of the [REDACTED] fails to make any adjustments to make the license comparable to the hypothetical negotiation even though it involves different parties, different patents, and was a settlement. *E.g. ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860, 870–73 (Fed. Cir. 2010) (court erred by considering licenses without “factual findings that accounted for the technological and economic differences between those licenses and the [patent in suit]”); *Flexuspine, Inc. v. Globus Medical, Inc.*, Case No. 6:15-cv-201, ECF No. 145 at 8 (E.D. Tex. July 6, 2016) (striking portions of damages report relying on non-comparable settlement agreement). Courts grant *in limine* motions to exclude licenses that are not comparable to the hypothetical negotiation. *CoreLogic Info. Sols., Inc. v. Fiserv, Inc.*, No. 2:10-CV-132-RSP, 2012 WL 4761739, at *2 (E.D. Tex. Sept. 20, 2012) (granted-in-part motion *in limine* to exclude evidence of license and settlement agreements that are not comparable to the hypothetical negotiation).

Samsung should not be permitted to distract the jury with an irrelevant and confusing discussion of unrelated litigation. The [REDACTED] and the details of the TFT lawsuit should be excluded, including at least DTX-080 (correspondence with Immersion regarding lawsuit), DTX-197 through DTX-199 (correspondence with Immersion regarding lawsuit), DTX-204 (Samsung and TFT [REDACTED]), DTX-266 (Bakewell Ex. 8 (calculating damages relying on TFT [REDACTED])), DTX-397 (TFT's complaint),

DTX-434 (May 17, 2015 order granting motion to amend docket control order), DTX-438 (Dec. 17, 2014 order granting motion to amend docket control order), DTX-440 (claim construction hearing transcript), DTX-772 (correspondence between parties), DTX-794 (correspondence between parties), and any other materials or testimony related to TFT.

V. MOTION IN LIMINE NO. 5 TO EXCLUDE COMPARISONS BY SAMSUNG OF THE ACCUSED PRODUCTS TO ANY PREFERRED EMBODIMENT (AS OPPOSED TO THE ASSERTED CLAIMS)

Samsung should be precluded from presenting argument or evidence comparing the accused products to preferred embodiments of the patents-in-suit. The Federal Circuit has repeatedly emphasized that “[i]nfringement, either literally or under the doctrine of equivalents, does not arise by comparing the accused product ‘with a preferred embodiment described in the specification, or with a commercialized embodiment of the patentee.’” *Johnson & Johnston Associates Inc. v. R.E. Service Co.*, 285 F.3d 1046, 1052 (Fed. Cir. 2002) (quoting *SRI Int'l v. Matsushita Elec. Corp.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985)). For this reason, courts in the Eastern District of Texas repeatedly grant motions *in limine* prohibiting “[c]omparing accused products to preferred embodiments of the patents.” *KAIST IP*, ECF No. 416, slip op. at 2; *see also Intellectual Ventures*, ECF No. 294, slip op. at 2 (Jan. 8, 2019) (granting motion *in limine* to exclude “any comparison of [defendant’s] product to anything other than the asserted claims to prove infringement”).

VI. MOTION IN LIMINE NO. 6 TO EXCLUDE ANY ARGUMENT OR EVIDENCE REGARDING COMPARISON OF THE ACCUSED PRODUCTS TO THE PRIOR ART

Samsung should not be able to introduce evidence or testimony comparing the accused products to the prior art. Samsung was unable to identify during meet and confer any alleged relevance or purported need to do so, and there is none. It is well established that there is no “practicing the prior art” defense to infringement. *See, e.g., Zenith Elecs. Corp. v. PDI Comm.*

Sys. Inc., 522 F.3d 1348, 1363 (Fed. Cir. 2008) (noting that even “proof that the prior art is identical, in all material respects, to an allegedly infringing product cannot constitute clear and convincing evidence of invalidity”). Accordingly, this Court routinely grants motions *in limine* directed at precluding such improper comparisons. *See, e.g., Packet Intelligence LLC v. Netscout Sys., Inc.*, No. 2:16-cv-230-JRG, ECF No. 228, slip op. at 3 (E.D. Tex. Sept. 29, 2017); *see also Semcon IP Inc. v. Huawei Device USA Inc.*, No. 2:16-cv-00437-JRG-RSP, ECF No. 290, slip op. at 3 (E.D. Tex. Dec. 15, 2017); *Parthenon Unified Memory Architecture LLC v. Apple, Inc.*, No. 2:15-cv-621-JRG-RSP, ECF No. 246, slip op. at 3 (E.D. Tex. Sept. 21, 2016); *Rembrandt Wireless Techs., LP v. Samsung Electronics Co.*, No. 2:13-CV-213-JRG-RSP, ECF No. 248, slip op. at 8 (E.D. Tex. Jan. 30. 2015).

VII. MOTION IN LIMINE NO. 7 TO PROHIBIT INTRODUCTION INTO EVIDENCE OR PUBLICATION OF NON-CHARTED PRIOR ART

As discussed in Immersion’s motion to strike, Dkt. 111, Samsung improperly and belatedly introduced argument based upon an uncharted patent (on which its technical expert, Dr. Wolfe, is a named inventor). During the meet-and-confer process relating to these motions *in limine*, Samsung declined to state whether it intended to show other uncharted prior art to the jury or to provide any relevance argument for doing so. Accordingly, Immersion requests that the Court preclude any publication, introduction into evidence, or substantive discussion of any uncharted prior art references (including the Wolfe reference and any as-yet unidentified, uncharted references) before the jury. As this Court has acknowledged, anything “more than a passing reference [to uncharted prior art] may result in jury confusion . . .” *Intellectual Ventures*, ECF No. 294, slip op. at 4. And other decisions in the Eastern District of Texas have reached the same result for the same reasons. *See, e.g., Red Rock Analytics, LLC v. Samsung Electronics Co., Ltd., et al.*, Case No. 2:17-cv-101 (E.D. Tex., March 14, 2019) (refusing to

allow uncharted prior art to be admitted as evidence or used as a demonstrative due to prejudice from risk of confusion); *Elbit Sys. Land & C4I Ltd. v. Hughes Network Sys., LLC*, No. 2:15-CV-00037-RWS-RSP, ECF No. 450, slip op. at 2 (E.D. Tex. July 25, 2017) (“Defendant is precluded from relying on uncharted prior art to prove invalidity by demonstrating that uncharted prior art discloses or suggests elements of the asserted claims. Defendant is also precluded from introducing uncharted prior art as an exhibit and displaying uncharted prior art as a demonstrative . . .”); *see also Perdiemco, LLC v. Industrack LLC*, No. 2:15-CV-00727-JRG-RSP, ECF No. 250, slip op. at 2 (E.D. Tex. Oct. 13, 2016) (same).

VIII. MOTION IN LIMINE NO. 8 TO EXCLUDE NON-INFRINGEMENT EVIDENCE AND ARGUMENT BASED ON FACTS NOT INCLUDED IN SAMSUNG’S RESPONSE TO NON-INFRINGEMENT CONTENTION INTERROGATORY

Immersion seeks an *in limine* order holding Samsung to its non-infringement contentions and ensuring that Samsung does not make non-infringement arguments based on facts not set out in Samsung’s response to Interrogatory No. 6. Immersion believes that Samsung will attempt to do so based on new facts in the report of Samsung’s non-infringement expert Dr. Wolfe.

On January 16, 2018, Immersion propounded Interrogatory No. 6 on Samsung, asking Samsung to describe the factual basis for any contention by Samsung that any accused product does not infringe any asserted claim. (Ex. 3.) Samsung most recently supplemented its response to this interrogatory on December 7, 2019. (Ex. 4.) By that time Samsung had been on notice of Immersion’s infringement contentions for more than a year, including Immersion’s identification of the “two regions” in Samsung’s accused products relevant to the asserted claims of the ’846, ’720 and ’181 patents. Samsung’s interrogatory response did not identify any facts allegedly demonstrating that any claim limitation was not met. Instead, Samsung merely listed claim limitations that it contended it did not practice. (Ex. 4.)

A month later, on January 16, 2019, when it served its non-infringement report and after Immersion served its infringement expert reports, Samsung for the first time sought to rely on new facts in support of a non-infringement argument. In particular, Samsung sought to contest the “two regions” limitations of the ’846, ’720 and ’181 patents on the ground that, according to Samsung, [REDACTED]

[REDACTED]. (Ex. 1 at ¶¶ 184-186.) Samsung could have, and did not, disclose this alleged fact during fact discovery.

Immersion was substantially prejudiced by Samsung’s failure to disclose these alleged facts in its interrogatory response, including because Immersion had no opportunity to depose Samsung witnesses about the alleged facts and because Immersion’s experts did not have the opportunity to respond to them in Immersion’s affirmative expert reports on infringement. This evidence therefore should be precluded under Fed. R. Civ. P. 26 and 37(c). Fed. R. Civ. P. 37(c) (“If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless”); *see also, e.g., Pers. Audio, LLC v. Apple, Inc.*, No. 9:09CV111, 2011 WL 6148587, at *5 (E.D. Tex. June 16, 2011) (precluding defendant under FRCP 37(c) from relying on or discussing documents and objects produced after close of fact discovery); *Saint Lawrence Communications LLC v. Motorola Mobility LLC*, Case No. 2:15-cv-00349-JRG, ECF No. 442, slip op. at 2 (E.D. Tex., Feb. 21, 2017) (striking expert opinions on non-infringing alternatives that were not disclosed in interrogatory responses); *EEOC v. Serv. Temps*, 2010 U.S. Dist. LEXIS 40063 at *22-28 (N.D. Tex., April 22, 2010) (granting *in limine* motion requiring plaintiff to make a showing under Rule 37(c) before being allowed to suggest a specific damages amount where underlying

information was not disclosed in fact discovery); *Bruce v. Ancra Int'l, LLC*, 2018 U.S. Dist. LEXIS 62115 at *6-7 (E.D. Louisiana, April 12, 2018) (granting *in limine* motion to exclude evidence that was not disclosed in fact discovery because “[t]he presumptive sanction under Rule 37(c)(1) for the failure to disclose is exclusion.”).

IX. MOTION IN LIMINE NO. 9 TO EXCLUDE EVIDENCE OR TESTIMONY SUGGESTING THAT AN AWARD OF DAMAGES IN THE CASE MIGHT DRIVE UP THE PRICE OF PRODUCTS TO END CUSTOMERS, CAUSE PEOPLE TO LOSE JOBS, OR HAVE OTHER SIMILAR ECONOMIC CONSEQUENCES

The Court should preclude Samsung from presenting evidence or argument suggesting that an award of damages may drive up the price of products to end customers, cause people to lose jobs, or have other similar economic consequences.

This Court has repeatedly held—and indeed many defendants (including Samsung) have acknowledged by agreement—evidence or argument about the impact to a Defendant’s employees or customers is irrelevant, and its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. *See* FRE 401, 402 and 403; *see, e.g., Rembrandt*, No. 2:13-cv-213-JRG-RSP, ECF No. 225, at 83:2-21 (Jan. 22, 2015) (Samsung agreeing in response to Court’s question that “there won’t be any argument that a damage award in this case would endanger your company or negatively impact employees or customers” and Court stating Samsung should have no problem so long as it does not “raise the specter that a certain damages award in this case would threaten the financial viability of Samsung or negatively impact employees or customers”); *Rembrandt*, No. 2:13-cv-213-JRG-RSP, ECF No. 248, slip op. at 5 (Jan. 31, 2015) (order on *limine*).¹

¹ See also *ContentGuard Holdings, Inc. v. Amazon.com, Inc.*, No. 2:13-CV-01112-JRG, 2015 WL 11089489, at *2 (E.D. Tex. Aug. 24, 2015) (precluding evidence or argument “to the possible consequences of a verdict in any parties’ favor, including the possible issuance of an injunction, an award of enhanced damages, an award of attorney’s fees, or arguments that a

Through the parties' meet-and-confers, Samsung indicated they opposed this *limine* because Samsung essentially wants to make a royalty stacking argument, specifically, to argue it was [REDACTED]

[REDACTED]. But like here, where there is no evidence of other royalties Samsung is paying or has been requested to pay on the accused products and there is no technical expert supporting the applicability of specific other patents that read on the accused products, a royalty stacking argument is likewise impermissible. *See Red Rock Analytics, LLC v. Samsung Elecs. Co., Ltd.*, No. 2:17-cv-101-RWS-RSP, ECF No. 243, slip op. at 2 (E.D. Tex. Mar. 13, 2019) (granting *limine* "that Samsung shall not present royalty stacking arguments"); *Network-1 Techs., Inc. v. Alcatel-Lucent USA, Inc.*, No. 6:11-cv-492-RWS-KNM, 2017 U.S. Dist. LEXIS 154435, at *10-11 (E.D. Tex. Sept. 21, 2017) (striking damages expert's royalty stacking arguments because defendant identified no specific requests or actual royalties on the accused products); *see also Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d 1201, 1234 (Fed. Cir. 2014) (royalty stacking not an issue "unless the accused infringer presents actual evidence of hold-up or stacking. Certainly something more than a general argument that these phenomena are possibilities is necessary."

(emphasis added)).²

verdict would result in (1) consumers paying more for devices; (2) the economy being negatively impacted; (3) an injunction or the method of use no longer being available for use; or (4) firings or layoffs"); *St. Lawrence Commc 'ns LLC v. ZTE Corp.*, No. 2:15-cv-349, ECF No. 458, at 2 (E.D. Tex. Mar. 2, 2017) (granting by agreement *limine* covering "Suggestion that Damages Awards May Drive up the Price of Products, put any Manufacturers out of Business, or Cause Jobs to be Lost"); *Smartflash LLC v. Apple Inc.*, No. 6:13-cv-447-JRG-KNM, 2015 U.S. Dist. LEXIS 179336, at * 9 (E.D. Tex. Jan. 29, 2015) (granting *limine* based on Apple's representation it would not say, imply, or suggest that a judgment in this case or award of damages would cause a disruption in Apple's business or cause a burden to its operations").

² Samsung's damages expert, Mr. Chris Bakewell, identifies five patents that result from a Google search and mentions Samsung's technical experts "confirmed there are many other patents related to haptics besides the patents-in-suit," but this is insufficient. *Commonwealth Sci. & Indus. Research Org. v. Cisco Sys. Inc.*, 809 F.3d 1295, 1302 (Fed. Cir. 2015) ("abstract

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Respectfully submitted,

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recitations of royalty stacking theory, and qualitative testimony that an invention is valuable—without being anchored to a quantitative market valuation—are insufficiently reliable.”). Samsung has no specifically identified demands for royalty payments (*see Network-1*, 2017 U.S. Dist. LEXIS 154435, at *10-11). Nor does Mr. Bakewell even suggest the technical experts’ statements support application of other patents *to the accused products*. At a minimum, a damages expert’s Google search and generic statements about other haptic patents is insufficient to allow an argument about the impact of paying Immerison royalties in this case impacting Samsung’s business, its employees, or its customers.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). Pursuant to Local Rule CV-5(a)(7)(D), all counsel of record were served with a true and cored copy of the foregoing by email on this the 15th day of March, 2019.

/s/ Bryan Wilson
Bryan Wilson

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

This is to certify that on January 3, 2018 this Court entered a Protective Order (Dkt. No. 32) which authorizes filing the attached documents under seal.

/s/ Bryan Wilson
Bryan Wilson

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(i), the undersigned certifies that counsel for Plaintiff has met and conferred with counsel for Defendants in accordance with Local Rule CV-7(h). In particular, counsel met and conferred regarding the substance of these motions by telephone on February 28, March 5, and March 8, 2019. No agreement was reached, and counsel for Defendants indicated that the Defendants are opposed to the relief sought in these motions. The discussions have conclusively ended in an impasse, leaving open issues for the court to resolve.

/s/ *Bryan Wilson*
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